



Andrew T. Houghton
212-898-4036
andrew.houghton@sdma.com

April 18, 2011

***Via Electronic Filing
And Via Federal Express***

Hon. Garrett E. Brown, U.S.D.J.
United States District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: *Illinois National Insurance Company v. Wyndham Worldwide Operations, Inc., et al.*,
Case No. 2:09-cv-01724-GEB-MCA

Dear Judge Brown:

This firm represents plaintiff Illinois National Insurance Company ("Illinois National") in the above-referenced matter. We submit this response in accordance with Your Honor's March 21, 2011 Order regarding the motion for attorney fees of defendants Wyndham Worldwide Corporation, et al. (collectively "Wyndham" or "Defendants").

The Court has broad discretion in considering the evidence and determining what constitutes a reasonable hourly rate for the legal services rendered by the two law firms. Evidence of a reasonable rate is before the Court, i.e., the rates charged by Wyndham's predecessor counsel, Coughlin Duffy.

In their April 4, 2011 submission, Defendants have sought to explain the substantial discrepancy between the hourly rates of Lowenstein Sandler PC and Coughlin Duffy. The Defendants seem to imply, but do not state directly, that Coughlin Duffy is not well suited to handle insurance coverage disputes on behalf of sophisticated insureds. Illinois National submits that the evidence indicates that Coughlin Duffy is a full-service law firm that works in a number of complex practice areas, including commercial litigation, and insurance and reinsurance).¹ Wyndham's Vice President (Legal Department) made the

¹ See, e.g., Exh. N to Lichtenstein Declaration [Docket No. 99-16].

Hon. Garrett E. Brown, U.S.D.J.

United States District Court for the District of New Jersey

Re: *Illinois National Insurance Company v. Wyndham Worldwide Operations, Inc., et al.*; Case No. 2:09-cv-1724

April 18, 2011

Page 2

“final decision” to retain Coughlin Duffy to defend this action.² Coughlin Duffy represented Wyndham for most of this case.

Defendants do not, and cannot, suggest that the issues presented in this matter are somehow beyond the experience, reputation and ability of Coughlin Duffy, but rather focus instead on the sophistication of Wyndham. To the contrary, defendants themselves characterized the issues in this matter as straightforward legal issues capable of resolution without discovery.³ In other words, as described by defendants, the issues in this matter were not sophisticated.⁴

Defendants suggest that the rates charged by Coughlin Duffy should not be considered as what is reasonable for this matter because Coughlin Duffy does “insurance defense,” and “primarily represent insurance companies” and charge “much lower hourly rates” in exchange for “high volume work” and “repeat business.” But this case was in fact controlled by Wyndham’s insurer, Berkley Aviation (there’s no dispute about this), and thus substantively entailed representation of an insurer’s interests, which Wyndham says is the specialty of Coughlin Duffy. Accordingly, Illinois National submits that the hourly rates charged by Coughlin Duffy (whose rates are reasonable according to Wyndham) are representative of reasonable rates for the legal services rendered in this case.

Illinois National notes the following evidence as indicative of a reasonable rate:

- Lowenstein partners Christopher Porrino and Michael Lichtenstein, attorneys with 19-20 years of experience, billed at average hourly rates of \$488.82 and \$450.08; Coughlin Duffy partner Justin Kinney, with 18 years of experience, billed at an hourly rate of \$210;
- Lowenstein associate Michael Long, an attorney with 7 years of experience, billed at an average hourly rate of \$360.19; Mr. Kinney billed out at \$210 per hour, and his 7-year associate billed at \$170 per hour;
- Lowenstein associates Eric Jesse and Amit Sondhi, attorneys with 2 years’ experience, respectively billed at average hourly rates of \$214.34 and \$210; Mr. Kinney billed out at \$210 per hour.

Based on the evidence of Coughlin Duffy’s rates, Illinois National submits that a *reasonable* rate would indisputably fall somewhere between Coughlin Duffy’s partner rate of \$210/hr and Lowenstein’s

² See Declaration of Marcus A. Banks, Esq. accompanying Wyndham’s motion for fees [Docket No. 103-7] at ¶ 4.

³ See Defendants’ March 2, 2010 letter to Hon. Madeline Cox Arleo, U.S.M.J. seeking leave to file a motion for summary judgment [Docket No. 48] at p. 3 (describing plaintiff’s position as “contrary to basic ... law ... and commonsense.”).

⁴ See Defendants’ Memorandum of Law in Support of Their Motions for Summary Judgment and to Dismiss the Complaint [Docket No. 60-1].

Hon. Garrett E. Brown, U.S.D.J.

United States District Court for the District of New Jersey

Re: *Illinois National Insurance Company v. Wyndham Worldwide Operations, Inc., et al.*; Case No. 2:09-cv-1724

April 18, 2011

Page 3

top average rate of \$488 for partners (average: \$349/hr); and somewhere between Coughlin Duffy's associate rate of \$170/hr and Lowenstein's top rate of \$360/hr (average: \$265/hr).

Respectfully submitted,



Andrew T. Houghton

Sedgwick, Detert, Moran & Arnold LLP

cc: Christopher S. Porrino (via ecf)
Michael David Lichtenstein (via ecf)
Eric Jesse (via ecf)